IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10182 of 2003

For Approval and Signature:

Hon'ble HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAKSUD YASIN KAYAMKHYANI

Versus

STATE OF GUJARAT

Appearance:

MS BANNA DUTTA FOR MR AR SHAIKH for Petitioner No. 1

MR AD OZA, GP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 26/08/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application under Article 226 of the Constitution of India, petitioner detenu has challenged his detention order passed against him by Police Commissioner, Surat, on 29.11.2002, in exercise of powers conferred upon him under Section 3(1)

of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the "PASA Act"). The petitioner came to be detained in pursuance of above said order from 29th November, 2002.

2. Grounds of detention placed on record reveals that under Section 379 of the IPC in all four offences came to be registered against the petitioner for the theft of two wheeler vehicles on 25.4.2002, 28.6.2002, 17.7.2002 and 24.9.2002. The grounds also reveal that two witnesses whose identity has not been disclosed under Section 9(2) of the PASA Act narrated the incident occurred on 22.9.2002 and 10.10.2002, by which it is alleged that the petitioner forcibly intercepted the vehicle of the witnesses and on suspicion that the witnesses offer information to the Police against the petitioner, the witnesses were beaten. This statement came to be recorded by Police Inspector, Mahitsura Police Station, Surat, on 24.10.2002 and 28.10.2002, and verified by the detaining authority on 26.11.2002. From the above material, detaining authority reached to the satisfaction that the petitioner detenu was dangerous person within the meaning of the PASA Act.

3. Learned Advocate Ms.. Banna Dutta for learned Advocate Mr. A.R. Shaikh for the petitioner and learned GP Mr. A.D. Oza for the respondents were heard at length.

4. The order of detention came to be assailed on various grounds. One of which is delay in passing of the order of the detention. From the facts as narrated above, it is clear that offence under Section 379 of the IPC came to be registered for the theft of two wheeler vehicles by the petitioner detenu on 24.4.2002, second on 28.6.2002, third on 17.7.2003. Thereafter, detaining authority relied upon unreported incident as narrated by the witness occurred on 22.9.2002. Statement of the said witness came to be recorded on 24.10.2002. The fourth offence came to be registered against the petitioner for the theft of vehicle on 24.11.2002. The detaining authority thereafter also relied upon an incident which is unreported, occurred on 10.10.2002, narrated by the witness, whose statement came to be recorded on 28.10.2002. The statements came to be verified on 26.11.2002 by the detaining authority and order came to be passed on 29.11.2002. The object of PASA Act is to put a detenu out of circulation in society for a temporary period to prevent the tendency that detenu of repeating his dangerous behaviour by which public order

might be disrupted. In this respect, it is clear that the subjective satisfaction of the detaining authority must be based on proximity between the past behaviour and the passing of the order. The delay in passing of the detention order in these circumstances may reflect non-application of mind in reaching to subjective satisfaction by the detaining authority. True it is that, delay, ipso facto, in passing an order of detention is not fatal to the detention of a person and has to be judged from the facts of each case. The learned G.P. Mr. Oza while relying on a decision of the Apex Court in the case of RAJENDRAKUMAR NATVARLAL SHAH vs. STATE OF GUJARAT AND OTHERS, reported in AIR 1988 SC 1255, urged that in the above case even unexplained delay was not considered as fatal by the Apex Court to the detention of the person detained. In the above said case, the direct and proximate cause for the impugned order of detention was the importation in bulk of Indian made foreign liquor by the detenu as a broker from across the border. It was revealed from the statements of the witnesses that the detenu was a person actually involved. The detenu was released on anticipatory bail but on that day there was no proposal to arrest the detenu though later it was discovered that there was no trace of the detenu. He came to be arrested on 2.2.1987 and detenu made statements admitting these facts. Meanwhile, the proposal to detain the detenu was placed before the District Magistrate, who after reaching subjective satisfaction, passed the order of detention under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. In the above circumstances, the Apex Court observed that though there was a delay between 2nd February and 28th May, 1987, it could not give rise to a legitimate inference that the subjective satisfaction arrived at by the District Magistrate was not genuine or that the grounds were stale or illusory or that there was no rational connection between the grounds and the impugned order of detention, but at the same time the Apex Court has also observed that it all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reasons for the delay in taking preventive action, like information of participation being available only in the course of investigation.

5. In the case of PRADEEP NILKANTH vs. S. RAMAMURTHY, reported in AIR 1994 SC 656, the Apex Court observed that taking into consideration the unexplained delay in passing of the detention order, in that case, warrants quashing of concerned detention order.

6. If the facts of this case is perused and factual data is examined, it is clear that if the case is examined from the crime wise, the activities of the detenu came to light right from 25.4.2002, the dates on which the crimes allegedly committed by the detenu, registered or unreported, necessarily denotes time gap not only in respect of repeating dangerous behaviour by the detenu but that gap is apparent on the part of the authority to discover such dangerous behaviour of the detenu. An offence came to be registered i.e. third one on 17.7.2002, unreported incident as narrated by the witness occurred on 22.9.2003, again a crime for theft came to be registered against the detenu on 24.9.2002 and again on 10.10.2002 if the incident as narrated by the second witness occurred, then unexplained delay on the part of the authority crystally emerges in discovering the dangerous behaviour of the detenu because the statements of the witnesses came to be recorded on 24.10.2002 and 28.10.2002. Again, the statements came to be verified only on 26.11.2002 by the detaining authority and the order came to be passed on 29.11.2002. The detenu has raised the plea that there is an unexplained delay in passing of the order, as aforesaid. There is ample substance in the said plea. It is found that the credible chain including ground of criminal and dangerous activity of the detenu and the purpose of detention is snapped by a long gap of more than one month in absence of the detention order. The facts of the case are also covered by decision of this court in the matter of THAKORE GIRISHJI @ GIDHAJI JENAJI vs. DISTRICT MAGISTRATE & ORS., reported in 2002 (1) GCD 338 and in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381, the detention order therefore cannot be sustained and deserves to be quashed on this ground alone.

7. In the result, this Special Civil Application stands allowed. The order impugned passed by the Police Commissioner on 29.11.2002 under PASA Act directing detention of the petitioner is quashed and set aside. The detenu is directed to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute. No order as to costs.

(J.R. Vora, J.)

p.n.nair